Supreme Court, U.S.
FILED

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No. ——

In The

# Supreme Court of the United States

October Term, 1996

JAMES L. CANNON,

*Petitioner,*

vs.

BRISTOL TENNESSEE BOARD OF EDUCATION; VINCENT TILLER, JR., Dr.; HERBERT L. TRINKLE; W. C. BURNETTE; PHYLLIS O'DELL; JERRY GREENE; WILLIAM J. MORRELL, Superintendent of Schools; RICHARD ARMSTRONG, Present Board of Education Member; BETH WEBB, Present Board of Education Member; CHARLES S. THOMPSON, Present Board of Education Member; JOHN T. HITE, Present Board of Education Member; LINDA BLEVINS, Present Board of Education Member; STEVE F. DIXON, Present Superintendent,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit**

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

I. Does a cause of action under 42 U.S.C. § 1983 for denial of due process in teacher termination proceedings accrue before the teacher has exhausted his state appellate rights under the teacher termination statute?

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## PETITION FOR A WRIT OF CERTIORARI

The petitioner, James L. Cannon, petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit was rendered on December 13, 1996, and was not published. It is printed as Appendix A to this petition. The opinions of the United States District Court for the Eastern District of Tennessee upon which the Court of Appeals based its ruling were rendered on January 5, 1996, and February 8, 1996. They also were not published. They are printed as Appendix B to this petition.

## JURISDICTION

The United States Court of Appeals for the Sixth Circuit rendered its decision on the petitioner's appeal on December 13, 1996. A timely petition for rehearing en banc was denied by that court on February 6, 1997. A timely application for an extension of time within which to file a petition for a writ of certiorari was granted by Justice Stevens on May 8, 1997, as Application No. A-786, extending the time to file a petition for a writ of certiorari in this matter to and including July 6, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No state shall . . . deprive any person of . . . property without due process of law. . . . "

42 U.S.C. § 1983 provides, in pertinent part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Section 28-3-104(a)(3) of the Tennessee Code Annotated provides in pertinent part: "The following actions shall be commenced within one (1) year after the cause of action accrued: . . . Civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes. . . . "

## STATEMENT OF THE CASE

The petitioner, James L. Cannon, was a tenured teacher in the public schools of Bristol, Tennessee. On November 28, 1988, he was terminated by the Bristol Board of Education for unprofessional conduct and insubordination, pursuant to the provisions of the Tennessee Teacher Tenure Law, §§ 49-5-501, et seq., of the Tennessee Code. That statute provides at § 49-5-513, inter alia, that "[a] teacher under 'permanent tenure' . . . status

who is dismissed . . . by action of the board may obtain a judicial review by filing a petition in the chancery court of the county where the teacher was employed. . . . The filing of such petition shall suspend the order of the board pending a decision by the chancellor, but the teacher shall not be permitted to return to teaching pending a final disposition of the appeal."

The petitioner pursued his statutory remedies, filing a timely petition in the Chancery Court for Sullivan County. That court rendered a final judgment on September 7, 1993, ruling "that the plaintiff, James L. Cannon, be, and hereby is, dismissed as a teacher in the Bristol Tennessee School System for the reasons stated in this memorandum and judgment."

The petitioner filed a timely appeal of that judgment to the Tennessee Court of Appeals, which affirmed the judgment of the Chancery Court on November 21, 1994. Petitioner's timely application to the Tennessee Supreme Court for permission to appeal was denied by that court on April 17, 1995.

On July 14, 1995, less than three months after he had exhausted his state remedies under the Teacher Tenure Law, the petitioner filed suit in the United States District Court for the Eastern District of Tennessee pursuant to 42 U.S.C. § 1983, alleging, inter alia, that he had been denied his Fourteenth Amendment right to due process of law at the hearing before the Board of Education, in the Chancery Court, and in the Tennessee Court of Appeals.

Without reaching the merits of the petitioner's case, the District Court dismissed it solely on statute of limitations grounds. Appendix B. The Court of Appeals

affirmed in an unpublished decision "for the reasons stated by the district court. Even when Cannon's factual allegations are accepted as true, he undoubtedly can prove no set of facts in support of his claims that would entitle him to relief . . . , because Cannon's cause of action accrued when he became aware of the alleged violation of his constitutional rights, in November of 1988. *Friedman v. Estate of Presser*, 929 F.2d 1151, 1159 (6th Cir. 1991). Therefore, Cannon's complaint is barred by Tennessee's one-year statute of limitations for civil rights actions. *Sevier v. Turner*, 742 F.2d 262, 272 (6th Cir. 1984)." Appendix A.

## REASONS FOR GRANTING THE WRIT

### A Cause Of Action Under 42 U.S.C. § 1983 For Denial Of Due Process In Teacher Termination Proceedings Does Not Accrue Before The Teacher Has Exhausted His State Appellate Rights Under The Teacher Termination Statute

Since there is no federal statute of limitations for actions brought pursuant to 42 U.S.C. § 1983, the federal courts are obliged to adopt the most closely analogous state limitations period. *Board of Regents v. Tomanio*, 446 U.S. 478 (1980); *Robertson v. Wegmann*, 436 U.S. 584 (1978); *Baker v. Board of Regents*, 991 F.2d 628, 630 (10th Cir. 1993). See *Wilson v. Garcia*, 471 U.S. 261 (1985).

However, "[w]hile state law supplies the statute of limitations for claims under § 1983, federal law determines when a federal claim accrues." *Eagleston v. Guido*, 41 F.3d 865, 871 (2d Cir. 1994). See also *Cope v. Anderson*, 331 U.S. 461, 464 (1947); *Arneil v. Ramsey*, 550 F.2d 774, 780

(2d Cir. 1977); *Butler v. Local Union 823*, 514 F.2d 442, 448-49 (8th Cir.), *cert. denied*, 423 U.S. 924 (1975).

A federal cause of action accrues when "the plaintiff could first have successfully maintained a suit based on that cause of action." *Bell v. Aerodex, Inc.*, 473 F.2d 869, 873 (5th Cir. 1973); *Santos v. District Council of New York City*, 619 F.2d 963, 968-69 (2d Cir. 1980); *King v. New York Telephone Co., Inc.*, 785 F.2d 31, 33 (2d Cir. 1986).

The Petitioner in this action claimed, among other things, that he was denied due process not only in the Board of Education hearing but also in his statutory appeals, which continued until less than one year before he filed his suit in the district court. Since both the district court and the court of appeals correctly assumed the truth of those claims for purposes of deciding the motion to dismiss, see *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970); the Petitioner's federal suit plainly sought relief for constitutional wrongs perpetrated less than one year before suit was filed.

In addition, and of more far-reaching significance, the Petitioner could not properly have pursued his due process claims under Section 1983 until he had exhausted the state remedies made available to him by the Tennessee Teacher Tenure Law.

Although this precise question has not been considered by this court previously, rulings in closely analogous cases affirm that the deprivation of a state-created property right cannot be challenged in a federal section 1983 action until the state-created procedures for vindication of that property right have been exhausted. Thus, an

employee ordinarily must exhaust his grievance or arbitration remedies under a collective bargaining agreement before suing an employer for breach of that agreement. *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652-53 (1965). And a property owner deprived of the value of his real property by action under color of state law must exhaust his state remedies before bringing a Section 1983 inverse condemnation action in federal court. *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 175-76 (1985); *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264 (1981). See *Villager Pond, Inc. v. Town of Darien*, 56 F.3d 375 (2d Cir. 1995). *Suitum v. Tahoe Regional Planning Agency*, ___ U.S. ___, 117 S. Ct. 1659 (1997), is not contrary to this line of cases since it holds that in that particular case there would have been no point in further pursuit of state remedies.

The tenure rights of public school teachers are creations of state law and constitute property rights as such. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 538 (1985); *Perry v. Sindermann*, 408 U.S. 593 (1972). The procedural due process to which a tenured teacher is entitled in a termination proceeding ordinarily involves both a fairly abbreviated pre-termination hearing, *Loudermill, supra*, and a more extensive process following termination. *Gerraghty v. Commonwealth of Virginia, Dept. of Corrections*, 52 F.3d 1274, 1283 (4th Cir. 1995); *Winegar v. Des Moines Indep. Com. School Dist.*, 20 F.3d 895, 901 (8th Cir. 1994); *Langley v. Adams County*, 987 F.2d 1473, 1480-81 (10th Cir. 1993). In Tennessee, by statute, the process of terminating a tenured teacher involves both the preliminary hearing before the local board of education and a

subsequent appeal through the state court system. Indeed, the statute explicitly provides that the termination is not final until the state court appellate process has been exhausted. Tenn. Code Ann. § 49-5-513(e).

In this case, therefore, the Petitioner could not have had a cause of action for alleged due process violations in his termination process until he had exhausted the state court remedies provided by the very statute which created his property right in the first place. Those remedies were exhausted less than one year before he commenced his federal court suit. Accordingly, the Court of Appeals erred in dismissing that suit on statute of limitations grounds.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JAMES L. CANNON, Petitioner

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*His Attorney*

## APPENDIX A

No. 96-5314

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES L. CANNON,

Plaintiff-Appellant,

v.

BRISTOL TENNESSEE BOARD OF EDUCATION; VINCENT TILLER, JR., Dr.; HERBERT L. TRINKLE; W.C. BURNETTE; PHYLLIS O'DELL; JERRY GREENE; WILLIAM J. MORRELL, Superintendent of Schools; RICHARD ARMSTRONG, Present Board of Education Member; BETH WEBB, Present Board of Education Member; CHARLES S. THOMPSON, Present Board of Education Member; JOHN T. HITE, Present Board of Education Member; LINDA BLEVINS, Present Board of Education Member; STEVE F. DIXON, Present Superintendent,

Defendants-Appellees.

ORDER

(Filed Dec. 13, 1996)

Before: LIVELY, NELSON, and RYAN, Circuit Judges.

James L. Cannon, proceeding pro se, appeals a district court order granting the defendants' motion to dismiss his complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6). This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Bringing this suit under 42 U.S.C. § 1983, Cannon alleged that several members of the Bristol (Tennessee) Board of Education and the Superintendent of the Bristol Schools violated his rights under the First and Fourteenth Amendments when they dismissed him from employment in 1988, after he circulated a certain letter to parents and students at Bristol High School. Cannon did not indicate in what capacity he was suing these defendants.

The district court concluded that Cannon's claims were barred by the one-year statute of limitations set forth in Tenn. Code Ann. § 28-3-104(a)(3) (1995). Therefore, the court granted the defendants' motion to dismiss and, subsequently, denied Cannon's Motion to Reconsider. On appeal, Cannon reasserts his arguments against the defendants and contends that his action accrued from April 17, 1995, the date the Tennessee Supreme Court affirmed the Tennessee Court of Appeals' decision in favor of the defendants on the same claims Cannon now presents in federal court.

This court concludes that the district court's judgment should be affirmed for the reasons stated by the district court. Even when Cannon's factual allegations are accepted as true, he undoubtedly can prove no set of facts

in support of his claims that would entitle him to relief, *LRL Properties v. Portage Metro Hous. Auth.*, 55 F.3d 1097, 1103 (6th Cir. 1995), because Cannon's cause of action accrued when he became aware of the alleged violation of his constitutional rights, in November of 1988. *Friedman v. Estate of Presser*, 929 F.2d 1151, 1159 (6th Cir. 1991). Therefore, Cannon's complaint is barred by Tennessee's one-year statute of limitations for civil rights actions. *Sevier v. Turner*, 742 F.2d 262, 272 (6th Cir. 1984).

Accordingly, the district court's order is affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Clerk

No. 96-5314

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

| | | |
|---|---|---|
| JAMES L. CANNON,<br>Plaintiff-Appellant,<br>v.<br>BRISTOL TENNESSEE BOARD OF EDUCATION, ET AL.,<br>Defendants-Appellees. | ) | ORDER<br>(Filed Feb. 6, 1997) |

**BEFORE:** LIVELY, NELSON, and RYAN, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

**ENTERED BY ORDER**
**OF THE COURT**

/s/ Leonard Green
**Leonard Green, Clerk**

## APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at GREENEVILLE

| | | |
|---|---|---|
| JAMES L. CANNON,<br>Plaintiff,<br>v.<br>BRISTOL TENNESSEE BOARD OF EDUCATION, *ET AL.*,<br>Defendants. | ) | No.<br>2:95-CV-269<br>Judge<br>Curtis L. Collier |

**MEMORANDUM**

(Filed Jan. 5, 1996)

Before the Court is the Motion to Dismiss pursuant to *Fed. R. Civ. P.* 12(b)(6) filed by Defendants (Court File No. 3). The Court's record shows Plaintiff James L. Cannon ("Cannon") did not file a Response. Defendants argue Cannon's claims are barred by the one (1) year statute of limitations set forth in *Tenn. Code Ann.* § 28-3-104(a)(3) (1995), which reads as follows:

> (a) The following actions shall be commenced within one (1) year after the cause of action accrued: . . .
>
> > (3) Civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes; . . . .

For the following reasons, the Court will **GRANT** the Motion to Dismiss.

## I. A Motion to Dismiss under *Fed. R. Civ. P.* 12(b)(6)

A motion to dismiss under *Fed. R. Civ. P.* 12(b)(6) requires the Court to construe the complaint in the light most favorable to the plaintiff, accept all the complaint's factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of the claims that would entitle relief. *Meador v. Cabinet for Human Resources,* 902 F.2d 474, 475 (6th Cir.), *cert. denied,* 498 U.S. 867 (1990); *see also Cameron v. Seitz,* 38 F.3d 264, 270 (6th Cir. 1994). The Court may not grant such a motion to dismiss based upon a disbelief of a complaint's factual allegations. *Lawler v. Marshall,* 898 F.2d 1196, 1199 (6th Cir. 1990); *Miller v. Currie,* 50 F.3d 373, 377 (6th Cir. 1995) (noting that courts should not weigh evidence or evaluate the credibility of witnesses). The Court must liberally construe the complaint in favor of the party opposing the motion. *Miller,* 50 F.3d at 377. However, the complaint must articulate more than a bare assertion of legal conclusions. *Scheid v. Fanny Farmer Candy Shops, Inc.,* 859 F.2d 434, 436 (6th Cir. 1988). "[The] complaint must contain either direct or inferential allegations respecting all the material elements to sustain a recovery under some viable legal theory." *Id.* (citations omitted).

## II. DISCUSSION

Cannon filed this action on 14 July 1995 under "Section 1983 of 42 U.S.C.A. or the Civil Rights Act of 1871" (Court File No. 1, p. 1). Cannon's Complaint states Defendants dismissed him from his job on 28 November 1988 (*See id.*). A period of over six years passed from Cannon's

discharge until the filing of the Complaint. *Tenn. Code Ann.* 28-3-104(a)(3) gives plaintiffs one (1) year within the accrual of a cause of action to commence a suit brought under federal civil rights statutes. "When allegations of discrimination involve a termination from employment, the critical date [on which to peg the accrual of a cause of action] is the date of termination." *Kessler v. Board of Regents,* 738 F.2d 751, 754 (6th Cir. 1984). Cannon has not responded to Defendants' motion to contend differently.

The Court finds Cannon's Complaint is barred by the one (1) year statute of limitations as stated in *Tenn. Code Ann.* § 28-3-104(a)(3). Accordingly, the Court will **GRANT** the motion to dismiss filed by Defendants (Court File No. 3).

An Order will enter.

**ENTER:**

/s/ Curtis Collier
CURTIS L. COLLIER
UNITED STATES
DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at GREENEVILLE

| | | |
|---|---|---|
| JAMES L. CANNON,<br>Plaintiff,<br>v.<br>BRISTOL TENNESSEE BOARD OF EDUCATION, *ET AL.*,<br>Defendants. | ) | No. 2:95-CV-269<br>Judge Curtis L. Collier |

**MEMORANDUM**

(Filed Feb. 8, 1996)

Before the Court is the Motion to Reconsider presumably filed pursuant to *Fed. R. Civ. P.* 59(e)[1] by Plaintiff James L. Cannon ("Cannon") (Court File No. 19). The Court dismissed Cannon's Complaint on 5 January 1996 (Court File No. 18), because Cannon's claims were barred by the one (1) year statute of limitations set forth in *Tenn. Code Ann.* § 28-3-104(a)(3) (1995), which reads as follows:

> (a) The following actions shall be commenced within one (1) year after the cause of action accrued: . . .
>
> (3) Civil actions for compensatory or punitive damages, or both, brought under the federal civil rights statutes; . . . .

---

[1] *Fed. R. Civ. P.* 59(e) reads as follows:

**Motion to Alter or Amend a Judgment.** A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

*See also Wright v. State of Tennessee,* 628 F.2d 949, 951 (6th Cir. 1980) (discussing application of state statute of limitations to federal cause of action). For the following reasons, the Court will **DENY** the Motion to Reconsider and **DISMISS** the case.

## I. STANDARD OF REVIEW

A district court has considerable discretion whether to reopen a case under *Fed. R. Civ. P.* 59(e). *Edward H. Bohlin Co., Inc. v. Banning Co., Inc.,* 6 F.3d 350, 355 (5th Cir. 1993); *Columbia Gas Transmission Corp. v. Limited Corp.,* 951 F.2d 110, 112 (6th Cir. 1991). The court must balance the need for finality with the need to render just decisions. *Edward H. Bohlin Co., Inc.,* 6 F.3d at 355. However, "[i]n practice, because of the narrow purposes for which they are intended, Rule 59(e) motions typically are denied." Wright, Miller & Kane, *Federal Practice and Procedure:* Civil 2d § 2810.1 at 128; *see also Ruscavage v. Zuratt,* 831 F. Supp. 417, 418 (E.D.Pa. 1993) (noting Rule 59(e) motions "should be granted sparingly because of the interests in finality and conservation of judicial resources").

## II. DISCUSSION

Cannon filed this action on 14 July 1995 under "Section 1983 of 42 U.S.C.A. or the Civil Rights Act of 1871" (Court File No. 1, p. 1). Cannon's Complaint states Defendants dismissed him from his job on 28 November 1988 (*See id.*). Accordingly to the Complaint, Cannon first litigated this case in this Court beginning in November 1989 under case number 2:95-CV-405. In October 1991, the United States Court of Appeals for the Sixth Circuit

affirmed the Court's granting of summary judgment against Cannon. Soon thereafter in March 1992, Cannon pursued litigation in the Tennessee state courts. The case wound its way through chancery court and up to the court of appeals, where the appeals court affirmed the lower court's decision based upon *res judicata* and collateral estoppel. The Tennessee Supreme Court denied application for appeal. Thus, Cannon claims he "exhausted his state remedies" and brings this case, again, to federal court (*See generally* Court File No. 1).

A period of over six years passed from Cannon's discharge until the filing of this Complaint. *Tenn. Code Ann.* 28-3-104(a)(3) gives plaintiffs one (1) year within the accrual of a cause of action to commence a suit brought under federal civil rights statutes. "When allegations of discrimination involve a termination from employment, the critical date [on which to peg the accrual of a cause of action] is the date of termination." *Kessler v. Board of Regents*, 738 F.2d 751, 754 (6th Cir. 1984). To the extent Cannon attempts to link his claims to actions taken by the Tennessee state courts or to peg the statute of limitations upon *any* action taken by the Tennessee state courts, that is irrelevant to the crux of his claim: his termination in November 1988.[2]

---

[2] The Court finds it unnecessary to address the doctrines of *res judicata* and collateral estoppel. Cannon's Complaint, while exhaustive, focuses on his termination in November 1988. All other matters discussed throughout the Complaint and the Motion to Reconsider are his argument and rationale for the termination claim, but they *do not* articulate independent claims. To the extent they do *attempt* to articulate independent claims, the Court finds they are inappropriately and untimely brought and procedurally incorrect.

The Court finds Cannon's Complaint is barred by the one (1) year statute of limitations as stated in *Tenn. Code Ann.* § 28-3-104(a)(3). Accordingly, the Court will **DENY** the Motion to Reconsider filed by Cannon (Court File No. 19). There being no other claims before the Court, the case will be **DISMISSED.**

An Order will enter.

/s/ Curtis L. Collier
CURTIS L. COLLIER
UNITED STATES
DISTRICT JUDGE